

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F401799

**GLENDA FAYE ROSEBURROW,
EMPLOYEE**

CLAIMANT

**CENTRAL ARKANSAS
TRANSIT AUTHORITY,
EMPLOYER**

RESPONDENT

**ARKANSAS MUNICIPAL LEAGUE
WORKERS' COMPENSATION TRUST,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED OCTOBER 27, 2004

Hearing conducted October 26, 2004, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Glenda F. Roseburrow, North Little Rock, Arkansas, proceeding without an attorney and

Mr. J. Chris Bradley, Attorney at Law, North Little Rock, Arkansas, appearing for the respondents.

STATEMENT OF THE CASE

This is a dispute over the claimant's contention that she suffered a compensable injury to her left knee during a motor vehicle accident in which she suffered admittedly compensable injuries to her right arm and shoulder.

Specifically, the claimant, a bus driver, contended that she also injured her left knee during the motor vehicle accident of April 28, 1999, and should be awarded reasonably necessary medical and related expenses. Other possible issues were reserved.

The respondents contended that the evidence fails to show that the claimant's knee was injured in the motor vehicle accident of April 28, 1999, particularly in light of the medical record which shows that she did not receive treatment for that condition until October, 2002, and fails to relate the problem to her motor vehicle accident.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employment relationship existed April 28, 1999; the claimant's average weekly wage on that date was \$392.00; and on that date the claimant sustained admittedly compensable injuries to her right arm and shoulder in a motor vehicle accident.

3. The preponderance of the evidence fails to show that the claimant suffered a compensable injury to her left knee as a result of the motor vehicle accident of April 28, 1999.

DISCUSSION

The claimant, 53 years of age at the time of the hearing, began her employment as a bus operator for the respondent employer on or about September, 1996. Thereafter, on or about April 28, 1999, through no apparent fault of the claimant's, the vehicle she was operating was struck from the rear by another vehicle and she sustained admittedly compensable injuries to her right arm and shoulder.

At the hearing, she described the incident in some detail and stated that she had stopped to accommodate a passenger, had her right hand on the fare box and her left hand in position to open the door when she saw the vehicle coming from the rear and warned the passengers. At the time of the impact, the claimant felt that she was "in a wave" and her right arm and hand jammed the fare

box and her left knee “touched” the dash. She properly reported the incident and was advised to consult her family physician after a day or two because she was feeling stiff all over.

Her family physician eventually referred her to a specialist whose treatment focused on the condition of her upper extremity. The claimant testified that she understood, at some point, her physicians were waiting to treat her knee problem but that it was too swollen to do so immediately. However, there is no such reference in the medical record. Indeed, the medical record makes no mention of the claimant’s knee condition until October, 2000, approximately one and one-half years after the initial incident. Thereafter, she received additional treatment and now requests related medical benefits.

It is well established that the claimant has the burden of proving entitlement to benefits, generally by a preponderance of the evidence and without the benefit of any presumption of compensability or entitlement to benefits.

Under prior law, it was the duty of the Commission to draw every legitimate inference possible in favor of the claimant, and to give the claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence as to meeting the burden of proof be weighed impartially and without giving the benefit of the doubt to any party, including the claimant. Act 10 of 1986, §10(2nd Ex. Sess.), Ark. Code Ann. §11-9-704(c)(4), effective July 1, 1986; Fowler v. McHenry, 22 Ark. App. 196 (1987). Even under prior law, when the claimant was entitled to the benefit of the doubt, conjecture and speculation, however plausible, were not permitted to supply the place of proof. Dena Construction Co. v. Herndon, 264 Ark. 791 (1979).

Here, the preponderance of the evidence fails to support the claimant’s contention that her knee injury is related to her compensable motor vehicle accident. For example, the MRI scan of

October 20, 2000, indicated a history of left knee pain with swelling for only two weeks, and no injury by history. An October 25, 2000, note from Dr. William F. Hefley, Jr. indicated that the claimant for the last three weeks had pain along the anterior aspect of the left knee and never had dislocated the patella or injured the knee. In short, nothing in the medical record attributes the claimant's knee problems to her compensable motor vehicle accident. On the other hand, at the time of the hearing, the claimant said that she had undergone physical therapy and that her knee had turned out fine. Nevertheless, unless the claimant is impermissibly given the benefit of the doubt or indulged by speculation on behalf of her claim, it cannot be said that the preponderance of the evidence of record shows that she sustained a compensable knee injury at the time of her original motor vehicle accident.

For the foregoing reasons, this request for benefits should be, and it is hereby, respectfully, denied and dismissed.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge